[illegible]

HARRIET A. MEAD, AS EXECUTRIX, &c., OF [illegible]
T. MEAD, DECEASED,

Appellant,

against

JOHN H. PLATT, AS ASSIGNEE IN BANKRUPTCY
OF ABRAHAM MEAD, BANKRUPT,

Respondent.

POINTS OF HARRIET A. MEAD, AS EXECUTRIX, &c., THE
APPELLANT HEREIN, AND BRIEF OF THE POINTS
[illegible] OF THE UNITED STATES AND THE
DISTRICT OF NEW YORK.

HENRY J. SCUDDER,

Attorney for [illegible]

56 Wall Street, New York City.

TO THE SUPREME COURT OF THE UNITED STATES:

The petition of Harriet A. Mead, as executrix of the last will and testament of James C. Mead, deceased, respectfully shows, that she is a citizen of the United States and a creditor of and claimant against the estate of Abraham Mead, bankrupt.

That said Abraham Mead was, on or about the 29th day of June, A. D. 1878, adjudicated a bankrupt by the District Court of the United States for the Southern District of New York, and on or about the 27th day of July, A. D. 1878, John H. Platt was appointed assignee in bankruptcy of said bankrupt's estate.

On or about the 19th day of July, A. D. 1878, your petitioner's testator, James C. Mead, duly filed with the Register in Bankruptcy in charge of the matter of Abraham Mead, bankrupt, his proof of debt duly verified for a claim amounting to $34,350.

On or about the 29th day of August, A. D. 1878, one Mary E. Travis, an alleged creditor of the said bankrupt, filed objections to the claim of said James C. Mead against said bankrupt's estate, and petitioned that the same should be disallowed, and the said proof of debt expunged by the said District Court, and upon the said objections and petition, copies of which are hereto annexed, and on motion of Nelson Smith, Esq., attorney for Mary E. Travis, the petitioning creditor, an order was made requiring said James C. Mead to show cause why the prayer of the petition should not be granted.

That thereafter through a period of about four years a long examination of witnesses was had before the Register in charge of said matter, conducted by the attorneys and counsel for said Mary E. Travis, the contesting creditor on the one side, and the attorneys for the claimant on the other side, and the testimony taken on such examination, consisting of about 1,000 pages of legal cap paper, was duly certified to the said District Court for hearing thereon.

Pending the argument by counsel upon said testimony, and on or about the fifth day of March, A. D. 1882, the said claimant James C. Mead died, leaving a last will and testament, wherein and whereby your petitioner was appointed the executrix of said last will and testament and the estate of James C. Mead.

That said last will and testament was, on or about the 13th day of April, A. D. 1882, duly admitted to probate as a will of real and personal estate, and your petitioner, on or about the last-named date, duly qualified as such executrix; and on or about the 29th day of April, A. D. 1882, she was, by an order of said District Court, substituted as claimant in said matter in the place and stead of said James C. Mead, deceased.

That or or about the 11th day of January, 1883, a decision was rendered and an order was made and entered in said United States District Court matter, wherein and whereby the said claim of the estate of James C. Mead against the estate of Abraham Mead, bankrupt, was disallowed, and the proof of debt aforesaid was expunged.

That the whole of the proceeding of contesting said claim was conducted by the counsel and attorney of the said contesting creditor, Mary E. Travis, and the order expunging said claim was entered by them, and from the commencement to the close of the said proceeding the said assignee of the bankrupt did not once appear therein, either personally or by attorney or counsel, and as your petitioner is informed and believes took no part in the said proceeding.

On the 20th day of January, A. D. 1883, your petitioner duly filed with the clerk of the said District Court her bond on appeal to the Circuit Court of the United States for the Southern District of New York, and on the same day she served on the clerk for the said District Court, and on Nelson Smith, Esq., attorney for the said Mary E. Travis, the contesting creditor in said proceeding, a notice of appeal to the said Circuit Court, and thereafter duly filed the transmiss from the said District Court to the said Circuit Court, and duly served the said John H. Platt, as assignee of Abraham Mead, bankrupt, with a statement of her claim in the nature of a declaration.

That on the 26th day of February, 1883, the said John H. Platt, as assignee, served upon your petitioner's attorneys an affidavit and notice of motion to dismiss her said appeal, upon the ground, among others stated, that no notice of appeal or

bond have been properly given as required by the bankrupt act, and particularly by § 4981 of the Revised Statutes of the United States.

That said motion was duly argued before Hon. Hoyt H. Wheeler, sitting as Circuit Judge, in the City of New York, and his decision thereafter filed, wherein and whereby said Judge held that said appeal must be dismissed on the ground that no notice of appeal had been served on said John H. Platt, as assignee, &c., and that said Circuit Court was therefore without jurisdiction of said appeal, and an order was thereupon entered on the 16th day of August, A. D. 1883, dismissing said appeal.

That annexed hereto are also copies of:

1. Proof of debt by James C. Mead.
2. Supplement to proof of debt by James C. Mead.
3. Order of Judge Brown, dated May 6, 1882, permitting amendment of proof of debt.
4. Opinion of Brown, J.
5. Order expunging proof of debt.
6. Notice of appeal.
7. Affidavit and order extending time to file appeal with Circuit Court Clerk.
8. Notice of appeal and statement.
9. Declaration.
10. Affidavit and notice of motion to dismiss appeal.
11. Affidavit of E. G. Black to oppose motion to dismiss appeal.
12. Stipulation as to hearing motion.
13. Opinion of Wheeler, J.
14. Order dismissing appeal.

That your petitioner is advised and verily believes that the requirements of Section 4981 of the Revised Statutes of the United States have been fully complied with by her, in that she gave notice of appeal to the Clerk of the said District Court, and to the contesting creditors, and that said Circuit Court for the Southern District of New York thereby acquired jurisdiction of said matter, and inasmuch as your petitioner is without other remedy in the premises and is legally entitled to the remedy and relief asked for from said Circuit Court, your petitioner prays this Court that it issue its writ of mandamus under its seal, to the Judge and Justice of the said Circuit Court of the United States for the Southern District of New York, commanding it to

entertain the said appeal and determine the same in due form of law.

And that your petitioner have such other relief as to law and justice may appertain.

And your petitioner will ever pray, &c.

HARRIET A. MEAD.

HENRY J. SCUDDER,
Attorney for Petitioner,
New York City.

SOUTHERN DISTRICT OF NEW YORK, ss.:

County of Westchester

HARRIET A. MEAD, being duly sworn, says that she is the petitioner named in the foregoing petition, that she has read the foregoing petition and knows the contents thereof, and that the same is true of her own knowledge except as to any matters therein stated upon information and belief, and as to those matters she believes it to be true.

Sworn to before me this 4th day of October, 1883.

Harriet A. Mead

C. H. Cummings
Notary Public

[L.S.]

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER
OF
ABRAHAM MEAD, bankrupt.

Before EDGAR KETCHUM, ESQ., Register in Bankruptcy of said Court, on the 29th day of August, A. D. 1878.

Upon the petition filed herein, and the prayer thereof, and on motion of Nelson Smith, attorney for the petitioning creditor, it is ordered, that a hearing upon the subject-matters set forth in said petition be held before me on the 7th day of September, 1878, at ten o'clock in the forenoon, at my office, No. 139 Fulton street, Bennett Building, in the City of New York, when and where James C. Mead, of Sing Sing, New York, the alleged creditor in said petition mentioned, may show cause, before me, the said Register, why the prayer of said petition should not be granted, and why proof of said alleged debt of James C. Mead, alleged creditor, should not be expunged.

And it is ordered, that a copy of said petition and of this order be duly served on said James C. Mead, at least five days before the day appointed for said hearing.

(Sd.) EDGAR KETCHUM,
Register in Bankruptcy.

(A copy of the original on file.)
EDGAR KETCHUM,
Register.

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER OF ABRAHAM MEAD, bankrupt.	In Bankruptcy.

TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK:

The undersigned, creditor of the above-named bankrupt, who has duly proved her debt in this matter, hereby protests against and objects to the proof of debt of James C. Mead, of Sing Sing, New York, an alleged creditor of the said bankrupt, and prays that the said proof be expunged and disallowed, upon the following grounds, which she states and avers on information and belief:

FIRST.

For defects and contradictions in said proof, appearing on the face thereof.

SECOND.

That the said claim of said James C. Mead was procured for the purpose of influencing the proceedings under this act.

THIRD.

That the said claim was made, or procured to be made, with intent to delay, hinder and defraud the creditors of said bankrupt, and in fraud of the provisions of this act.

FOURTH.

That the said claim was concocted with the bankrupt, in view of the commencement of proceedings in bankruptcy, with intent thereby to control the said proceedings, the election of assignee, and the discharge therein, in the interest of the said bankrupt.

FIFTH.

That the alleged claim aforesaid, of James C. Mead, was not, at the date of said proof, a just and true claim against said bankrupt, but was then and is now, wholly or in part, fictitious and fraudulent.

SIXTH.

That the said James C. Mead never made to the bankrupt the loans alleged to have been made by him in the said proof.

SEVENTH.

That the alleged notes made by the bankrupt to said James C. Mead, copies of which are attached to said proof, are void for want of consideration.

EIGHTH.

That said notes were not made or delivered by said bankrupt to said James C. Mead on the respective dates which they bear, but at a period or periods subsequent to such dates.

NINTH.

That if any money or property passed to the bankrupt from said James C. Mead at or about the dates of said notes, said James C. Mead was not the true owner, in good faith, of said money or property, but allowed his name or his agency to be used as a cover to conceal certain fraudulent transactions of said bankrupt, with intent to delay, defraud or hinder his creditors.

TENTH.

That no new nor adequate consideration passed to the bankrupt from said James C. Mead for said notes at or about the time of the alleged delivery to him of said notes, and that said James C. Mead is not now, nor was he at the date of said proof, the bona-fide holder thereof, for value.

ELEVENTH.

That the sum of $34,350 was not at the date of said proof, nor is now, due said James C. Mead from said bankrupt.

TWELFTH.

That said notes were concocted by the bankrupt personally, or through his agent or agents, and are fabricated evidence of a fictitious claim of large amount, by the seeming existence of which said bankrupt hoped and intended to overawe and defraud his creditors and to influence these proceedings.

THIRTEENTH.

That the notes referred to in the affidavit of James C. Mead annexed to and in support of his said pretended claim or proof, as having been surrendered by him upon the reception by him of the alleged notes upon which his alleged claim is founded, were themselves invalid, and did not at the date of their surrender, and do not now, properly constitute an indebtedness from said bankrupt to said James C. Mead.

STATE OF NEW YORK, COUNTY OF WESTCHESTER, ss:

MARY E. TRAVIS, being sworn, says that she is the petitioner and creditor above referred to, and has read the foregoing petition; that the same is true of her own knowledge, except as

to the matters therein stated to be alleged upon information and belief, and that as to those matters she believes it to be true.

MARY E. TRAVIS.

Sworn to before me this 29th day of August, 1878.

COLERIDGE A. HART,
[L. S.] Notary Public,
Westchester Co., N. Y.

Cert. filed in N. Y. Co.

[ENDORSED:]

United States District Court, Southern District of New York. In the Matter of Abraham Mead, bankrupt. Certified copy petition and order for the examination of claim of James C. Mead. Nelson Smith, Atty. for Petr., 7 Murray St., N. Y.

To James C. Mead, alleged creditor: Sir—Please take notice of the order, of which within is a certified copy, duly entered and filed in the office of Edgar Ketchum, Register in Bankruptcy, on the 29th day of August, 1878. Nelson G. Smith, Atty. for Cr. Mary E. Travis.

IN THE DISTRICT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER OF ABRAHAM MEAD, bankrupt.	In Bankruptcy.

SOUTHERN DISTRICT OF NEW YORK, ss.:

At New York City, in the County of New York and State of New York, on the nineteenth day of July, A. D. 1878, before me, a Notary Public in and for the State of New York, came James C. Mead, of Sing Sing, in the County of Westchester and State of New York, and made oath, and who, after being duly sworn and examined at the time and place aforesaid, upon his

oath says that the said Abraham Mead, the person against whom a Petition for Adjudication of Bankruptcy has been filed, at and before the filing of the said petition, was and still is justly and truly indebted to deponent in the sum of thirty-four thousand three hundred and fifty dollars for money loaned and advanced by him to said Abraham Mead at or about the dates of the several promissory notes made and delivered by said Abraham Mead to deponent, as follows: One dated April 10, 1873, for $10,000, payable on demand; one dated January 1, 1874, for $5,750, payable on demand; one dated June 3, 1874, for $4,600, payable on demand; one dated January 4, 1875, for $8,000, payable on demand, and one dated February 3, 1875, for $6,000, payable on demand; all of which said notes deponent is now the owner and holder of, and copies of which are hereto annexed, marked Exhibits A, B, C, D and E.

That no payment has been received on account thereof, nor judgment rendered thereon, for which said sum of thirty-four thousand three hundred and fifty dollars and no cents, or any part thereof, the deponent says that he has not, nor has any person by his order, or to this deponent's knowledge or belief, for his use, had or received any manner of satisfaction or security whatever.

And this deponent further says that the said claim was not procured for the purpose of influencing the proceedings under the act of Congress entitled "An Act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867; and the acts amending the same, that no bargain or agreement, express or implied, has been made or entered into, by or on behalf of this deponent to sell, transfer, or dispose of said claim, or any part thereof, against said bankrupt, or to take or receive, directly or indirectly, any money, property or consideration whatever, whereby the vote of this deponent for assignee, or any action on the part of this deponent, or any other person in the proceedings under said act, has been, is, or shall be in any way affected, influenced or controlled.

JAMES C. MEAD.

Subscribed and sworn to before me this 19th day of July, A. D. 1878, the same being satisfactory to me.

EDGAR KETCHUM,
Register in Bankruptcy.

Exhibit A. E. K. R.

NEW YORK, January 4th, 1875.

Three days after date I promise to pay James C. Mead, or order, eight thousand dollars, value recd.

$8,000.00. A. MEAD.

Exhibit B. E. K. R.

NEW YORK, June 3d, 1874.

On demand I promise to pay James C. Mead, or order, four thousand six hundred dollars, value recd.

$4,600.00. A. MEAD.

Exhibit C. E. K. R.

$6,000.00. SING SING, N. Y., Feb. 3d, 1875.

On demand I promise to pay to James C. Mead, or order, six thousand dollars, value recd.

A. MEAD.

Exhibit D E. K. R.

$5,750.00. SING SING, N, Y., Jan. 1st, '74.

On demand I promise to pay James C. Mead, or order, five thousand seven hundred and fifty dollars, value recd.

A. MEAD.

Exhibit E. E. K. R.

NEW YORK, April 10th, 1873.

On demand I promise to pay James C. Mead, or order, ten thousand dollars, for value recd.

$10,000.00. A. MEAD.

IN THE DISTRICT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER
OF
ABRAHAM MEAD, bankrupt.

SOUTHERN DISTRICT OF NEW YORK, ss.:

JAMES C. MEAD, of Sing Sing, Westchester County and State of New York, being duly sworn, says that he is a creditor of the above-named bankrupt; that on the 19th day of July, 1878, he swore to and filed with Edgar Ketchum, Esq., Register in Bankruptcy, in charge of the above matter, a proof of his claim against said Abraham Mead. That the amount of deponent's said claim is the sum of thirty-four thousand three hundred and fifty dollars. That said claim is for moneys loaned and advanced by deponent to said Abraham Mead at and about the dates of said notes set forth in said proof of claim, and of other notes surrendered, and the notes now proven on, given, and interest on sums which had been loaned prior to the giving and receipt of said notes, and which went to make up said sums respectively set forth in said notes.

JAMES C. MEAD.

Subscribed and sworn to before me this 28th day of July, A. D. 1878.

EEGAR KETCHUM,
Register.

At a stated term of the District Court of the United States for the Southern District of New York, held at the United States District Court Room, in the City of New York, this sixth day of May, A. D. 1882.

Present—Hon. Addison Brown, District Judge.

In the Matter
of
Abraham Mead, bankrupt.

Re-examination of Claim of James C. Mead.

On the consent in open Court by Black & Ladd, of counsel for Mrs. Harriet A. Mead, executrix, &c., of James C. Mead, deceased, and of C. A. Hart, Esq., of counsel for Mrs. Mary E. Travis, objecting creditor herein to the amendment of the record herein, by supplementing the original proof of debt herein by the affidavit of said James C. Mead, made and filed with the Register herein, on the 20th day of July, A. D. 1878;

Now, on said aforesaid consent, it is ordered that the aforesaid proof of debt of said James C. Mead be, and hereby is, deemed amended and supplemented by his said affidavit of July 20th, 1878, and that the record herein be amended by attaching thereto said affidavit of July 20th, 1878, *nunc pro tunc*, as of the date of said return. Time to serve brief in reply extended to May 13th, 1882.

Addison Brown.

Attest:
Saml. H. Lyman,
Clerk.

[Endorsed:]

U. S. District Court, Southern District of New York. In the matter of Abraham Mead, bankrupt. Re-examination of claim of J. C. Mead. (Copy.) Order of amendment of proof of debt. Filed May 6th, 1882. Black & Ladd, attys. for H. A. Mead. 99 Nassau St., N. Y.

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF N. Y.

IN THE MATTER
OF
ABRAHAM MEAD, bankrupt.

NELSON SMITH and C. A. HART for contestants.
EDWARD G. BLACK for claimant.

BROWN, D. J. The contesting creditor in this proceeding seeks to expunge a proof of debt made by the claimant, James C. Mead, a cousin of the bankrupt, upon five promissory notes of the latter, dated in 1873, 1874 and 1875, to the amount of $34,350. The adjudication of bankruptcy was made on June 29th, 1878, in involuntary proceedings, upon the petition of six creditors, including the claimant, at the instance and request of the bankrupt or his attorneys.

The regular business of the bankrupt was that of a plumber; but he had been largely engaged in speculation in city lots during fifteen or twenty years prior to the adjudication; and in the year 1875, or prior thereto, he had become insolvent through the great depreciation in the value of real estate during the few years previous.

The claimant, in his original proof of debt, states that the notes were given for money "loaned and advanced by him to the bankrupt at or about the dates of the several notes," &c. By an additional affidavit which has been admitted as an amended statement of the consideration of the notes, they are alleged to have been given "for moneys loaned and advanced by the claimant to the bankrupt at or about the dates of said notes and of other notes surrendered, and the notes now proven or given and interest on sums which had been loaned prior to the giving and receipt of said notes."

Though the grammatical construction of the amended statement may be dubious the meaning is plain, that the sole foundation of the claim is a simple loan of moneys to the bankrupt at various times with the accumulations of interests thereon, and

the notes are presented as unconditional obligations of the bankrupt to pay the amounts stated in them, as they import upon their face.

The examination of this claim under Section 5081 of the Revised Statutes, upon which a large mass of evidence has been taken, discloses transactions between the claimant and the bankrupt running back perhaps to 1860. But no books of account recording any of these transactions are produced, not any vouchers in support of a single one of the alleged original loans. The claimant, moreover, was unable on his examination to specify the date or amount of any one of all his alleged advances of money; but he estimated that the total amount advanced by him to the bankrupt was from $10,000 to $12,000, the rest of the claim being profits.

These advances are repeatedly spoken of in the testimony as loans upon *interest*. But the examination shows by a great preponderance of testimony, both of the claimant and of the bankrupt, that all the moneys advanced by the claimant were advanced for the purposes of continuous speculations in city lots, on the joint account of the claimant and the bankrupt, and of others who might advance him money for the same purposes; the purchases and sales to be made by or under the management of the bankrupt, and the profits to be divided *pro rata*, according to the money of each employed in the purchase. Up to about 1872, these speculations seem to have been largely profitable; many such purchases and sales on joint account were made and large profits thereon were reported by the bankrupt to the claimant. No accounting in detail was ever had between the parties as to any of the purchases and sales. The claimant took without question such statements of the results as the bankrupt from time to time made to him. By January 1st, 1875, the claimant's interest in the joint operations had amounted, according to an entry made by the bankrupt in his pocket diary of that date, "in an accounting with James C. Mead," to "$18,970, in cash due him, not invested, and $21,380, invested into lots."

The claimant testified explicitly that none of the moneys advanced, or of the profits thereon from time to time, were ever withdrawn by him; but that as often as any lots were sold, both the principal invested in them and his share of the profits were left in the hands of the bankrupt for further similar speculative

purchases; and that the bankrupt had full authority from him to employ all such moneys and profits in that way; and that this understanding between them continued *down to the last.* From some portions of the testimony it would appear that notes were sometimes given on the original advance of money; from other portions, that notes would be taken when profits were ascertained or declared on some sale of lots, the former notes being surrendered and new ones substituted, including the profits. But from the explicit testimony of the claimant, that it was the understanding that all such advances and profits remained in the bankrupt's hands for further speculation on joint account down to the last, and from the fact that they were so used or held by the bankrupt, it is manifest that such notes could not have been either given or received, or intended by either party, as unconditional obligations to pay the sums named in them. They were necessarily subject to the result of the speculations in which the parties were jointly engaged; and they were probably designed as no more than memorandums or vouchers of the estimated amount in round numbers (for they do not accord in dates or amounts with any of the entries in the bankrupt's private diary) of the contributions of the claimant from time to time to the joint operations in charge of the bankrupt. Upon notes given for such a purpose or on such understanding, the facts being proved or admitted, no judgment could be recovered while the joint transaction remained open and unsettled, as in this case.

The basis of the claim, as stated both in the original and in the amended proof of debt, is therefore shown to be erroneous. The notes do not represent any loan of money upon interest, nor was there ever any conditional obligation of the bankrupt to pay the amount of the notes, as they import on their face or any part of them. A loan on interest, with a further stipulation for a share of any profits which the bankrupt might make by the use of the moneys on his own account, would have been usurious. But it is very clear, upon all the evidence, that these were not such loans at all. The moneys advanced remained in the bankrupt's hands, the proper moneys of the claimant for use in speculation on joint account; the claimant's share of the profits when collected were the claimant's proper funds; and both were subject to deduction for his share of any losses that might arise; and at the close of all the transactions on joint account, any

moneys in the bankrupt's hands, and any claim against him for previous receipt of such moneys, were subject to the offset by whatever losses in any of the joint transactions were justly apportionable to the claimant's share.

At the date of the "accounting" above referred to, viz., January 1st, 1875, eleven lots, purchased about 1872, in which $21,380 of the claimant's funds are said to have been invested, were still unsold. They had greatly depreciated in value since the purchase, and large loss upon them beyond the money invested in the purchase was then obvious. They were shortly afterwards, during the year 1875, disposed of, either at private sale or by foreclosure, and at such a loss upon the claimant's share therein as would appear from the evidence put in by the contestant to exceed the amount of the notes proved, and the entire credit given to the claimant by the bankrupt in his entry of January 1st, 1875.

The claimant's share of the loss in these lots would be offset even against any claim upon the bankrupt on loans, independent of the joint transactions; and this offset, as I have said, seems from the evidence to be equal to the entire claim presented, unless the claimant's share in the eleven lots referred to was subsequently materially diminished. It is contended by the claimant that it was so diminished in January and February, 1875, to the extent of $13,000, upon an agreement to that effect made in January and February, 1875, at the time when the notes of $5,000 and $8,000 were given, and that these two notes were given as absolute obligations. But I am not satisfied from the evidence that any such change in the relative obligation of the parties, or any such reduction in the claimant's share of the losses justly chargeable against him, is made out, either in law or upon the facts.

As above stated, in January and February, 1875, when the agreement for the partial withdrawal of claimant's interest in the lots is alleged to have been made, large losses beyond the money invested in the lots then held on joint account had obviously been incurred. The claimant had no interest in them of any pecuniary value which he could convey or transfer to the bankrupt, but only a large loss which he was legally bound to share with him *pro rata*. Accordingly no transfer or sale of his interest to the bankrupt is spoken of in the testimony, but only a withdrawal of so much from the lots. But in fact the claim-

ant then had no moneys in those lots which could be withdrawn; all that had been invested in them on his acccount had been plainly lost, and far more; and I cannot doubt that both parties knew this fact. Upon the testimony the note of $8,000 appears as nothing but a voluntary concession to the claimant's complaints, without any legal demand upon the bankrupt for any valuable interest in the lots. Any new agreement, however, whereby the bankrupt's share of the losses already incurred was to be materially increased, could only be sustained upon some sufficient legal consideration. The only consideration alleged is in connection with the note of February, 1875, and the alleged withdrawal of $5,000, at that time, viz.: In the advance of $1,000 by the claimant to the bankrupt to enable him to rescind a contract of sale of his house on Fifty-third street, and pay back the cash received on the contract of sale; and the bankrupt testifies that the giving of the note of February, 1875, and the withdrawal were "on the same day" as the advance of the $1,000, "or on the next day." But the testimony subsequently taken shows incontestably that this repayment was in September, 1874, some four or five months before the time of the alleged partial withdrawal of the claimant's interest in the lots, and before the giving of either of the two notes referred to; so that if the partial "withdrawal" of the claimant's interest was in January and February, 1875, as alleged, it was without any proved legal consideration; nor can it be supposed that the bankrupt would be willing to assume a greatly increased share of the loss without any consideration whatever. But if he were willing a mere promise to do so, and a note given for no other consideration, would not be legally binding. On the other hand, if the time of the "withdrawal" be supposed to have been erroneously stated as in January and February, 1875, instead of September, 1874, then the evidence fails to connect the notes of January and February, 1875, with any such withdrawal four or five months previous; and the bankrupt's entry on January 1st, 1875, of the result of "the accounting with James C. Mead" on that date must be held to include and to allow for any such "withdrawal" or change of interests made in the September previous; and the claimant's share of the losses would then remain undiminished as shown by the contestant. Moreover, the testimony in relation to the alleged "withdrawal" refers only to an interest in the particular lots then unsold, and does not show any

change whatever in the conditions or purposes for which the money deemed withdrawn from the lots was still left in charge of the bankrupt. The claimant says expressly that the same arrangement down to the last, so that the notes of January and February, 1875, if given on the withdrawal as claimed, would not differ in character from the previous ones, but would be legally subject to the result of the final accounting as to all the joint transactions.

Holding upon the evidence, therefore, that none of the notes in question were given upon any loan of money on interest, or intended as absolute or unconditional promises to pay the amounts mentioned in them, but that they were at most merely vouchers for the estimated amount of the claimant's moneys in charge of the bankrupt for the purposes of speculation in lots on joint account, and, therefore, at all times subject to the final result of all the joint transactions; that this original understanding of the parties continued unchanged "down to the last," and that large losses ultimately arose in the joint transactions, a part of which is chargeable against the claimant, and no final account in relation thereto having ever been had between the bankrupt and the claimant, I must hold that the proof of debt as filed is not made out, either in form or in substance, and that it must, therefore, be expunged, whether anything is owing to the claimant, either upon the notes or for his advances and profits, depends wholly upon the result of the final purchases and sales on joint account; and this has never been ascertained either by any attempted settlement between the parties, or by accounting in Court.

The evidence given in this proceeding by the contestant in relation thereto was incidental only, and not upon a direct issue on that subject. Although the evidence, therefore, shows losses sufficient to cover all the claimant's demands, it should not, I think, be held to preclude further examination on that subject, if on a just accounting as to all the joint transactions anything is claimed to be due.

An order should therefore be entered expunging the proof of debt as made, but without prejudice to the claimant or his representative filing new proof of debt for any balance claimed upon joint transactions in real estate, or upon an account stated as the result of all their joint dealings; but such new proof should not be allowed except upon payment by the claim-

ant of the costs already incurred in this proceeding, nor except upon a statement in detail of the account of the joint transactions since the last actual settlement between the parties, upon which any balance may be claimed; and in any proceedings for the reëxamination of such new proof of debt, if made, the testimony already taken, or any part thereof, may be used by either party.

New York, November 21, 1882.

(Signed)

ADDISON BROWN.

[ENDORSED:]

U. S. District Court, So. District of N. Y. In the matter of Abraham Mead, bankrupt. Opinion, Brown, J. Opinion given Nov. 21, 1882.

At a stated Term of the District Court of the United States for the Southern District of New York, held at the Court Room thereof, in the General Post Office Building, in the City of New York, on the 11th day of January, 1883.

Present—HON. ADDISON BROWN, District Judge.

IN THE MATTER

OF

The Re-examination of the Claim of HARRIET A. MEAD, as Executrix of the Last Will and Testament of James C. Mead, deceased, against the Estate of ABRAHAM MEAD, bankrupt.

IN THE MATTER

No. 6612. OF

ABRAHAM MEAD, bankrupt.

A petition having been duly filed in the office of Edgar Ketchum, Esq., Register herein, on the 29th day of August, 1878, objecting to the proof of debt filed herein by James C. Mead, on the 19th day of July, 1878, and praying that the same might be expunged and disallowed, and an order having thereupon been duly made on the day first aforesaid by said Register for a hearing upon the subject matter of said petition, and requiring said James C. Mead to show cause why the prayer of said petition should not be granted and said proof of debt should not be expunged; and on the return day of said order said claimant having appeared in person and by counsel and filed an answer denying the allegations of said petition, and thereupon testimony having been duly taken before said Register in respect to said claim, and upon conclusion thereof, objection having been made in behalf of said claimant to decision by said Register of said matter, the same, by consent of the respective parties, having been duly referred and certified to this Court for its

decision, and (the claimant, James C. Mead, having died) this matter having been duly revived and continued in the name of Harriet A. Mead, as executrix of the last will and testament of said James C. Mead; now, the cause having been duly brought on for argument, after hearing MR. HART, OF COUNSEL FOR PETITIONER AND CONTESTANT IN HER BEHALF, and Mr. Black, of counsel for claimant in her behalf, and after due deliberation,

It is ordered adjudged and decreed that said claim or proof of debt of James C. Mead, as filed herein on the 19th day of July, 1878, together with the amendment made thereto on the 6th day of May, 1882, by order of this Court, be and the same is hereby allowed and expunged.

Without prejudice, however, to the filing by said Harriet A. Mead, claimant, within sixty days after the service of a copy hereof on her attorney, of a new proof of debt for any balance claimed by her as the executrix of the last will and testament of James C. Mead, upon joint transactions of said James C. Mead and bankrupt in real estate, or upon an account stated as the result of all their joint dealings.

Provided, however, that such new proof shall not be received except upon proof of payment within the same time by the claimant of one-half of the costs and disbursements incurred in this proceeding, nor except upon a statement in detail of the account of such joint transactions since the last actual settlement between the said James C. Mead and the bankrupt upon which any balance may be claimed as due the claimant.

It is further ordered that in any proceedings for the reëxamination of such new proof of debt, if made, the testimony already taken, or any part thereof, may be used by either party to such reëxamination.

This order is also without prejudice to the contestants applying for such further order as to the costs of this proceeding, as may be equitable in case no further proof of debt is filed within the period of sixty days aforesaid, or if so filed, then after any further proceedings contesting such new proof; or, if not contested, then after the allowance of such new proof.

(Signed) ADDISON BROWN.

[ENDORSED:]

No. 6612. District Court of the United States, Southern District of New York. In the matter of Abraham Mead, bankrupt.

Reëxamination of claim of Harriet A. Mead, executrix of the last will and testament of James C. Mead, against the Estate of Abraham Mead, bankrupt. Order expunging proof of debt. NELSON SMITH ATTORNEY FOR CONTESTANT, 7 Murray street, New York. Please take notice that the within is a copy of an order duly made the 11th day of January, 1883, and herein entered the same day in the office of the Clerk of the District Court of the United States for the Southern District of New York, at his office, in the General Post Office Building, in the City of New York. Dated New York, January 12th, 1883. To Edward G. Black, Esq., Claimant's Attorney. Yours, &c., NELSON SMITH, CONTESTANT'S ATTORNEY.

DISTRICT COTRT OF THE UNITED STATES

IN AND FOR THE SOUTHERN DISTRICT OF NEW YORK.

In the matter of the re-examination of the claim of HARRIET A. MEAD, as Executrix of the Last Will and Testament of James C. Mead, deceased,

AGAINST

The Estate of ABRAHAM MEAD, bankrupt.

At the City of New York on the 20th day of January, A. D. 1883.

TO THE CLERK OF THE DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, AND TO MARY E. TRAVIS, CONTESTING CREDITOR.

You are hereby notified that I claim an appeal from the decision of the Judge of said Court, made on the 11th day of January, A. D. 1883, refusing to allow and expunging the claim of James C. Mead, now represented by me as his Executrix, when presented against the estate of Abraham Mead, bankrupt, to the

Circuit Court of the United States, next to be holden at the City of New York, in said District, on the first Monday of April, A. D. 1882.

HARRIET A. MEAD,
As Executrix of J. C. Mead, deceased.

EDWARD G. BLACK,
Attorney for Claimant.

[ENDORSED:]

U. S. District Court, Southern District of New York. In the matter of the re-examination of claim of Harriet A. Mead, as Executrix, &c., of Jas. C. Mead, deceased, against the Estate of Abraham Mead, bankrupt. Notice of Appeal. Edward G. Black, Attorney for Claimant Appellant, 99 Nassau street, N. Y. To Nelson Smith, Esq., Attorney for Contesting Creditor, 7 Murray street, N. Y. Service of a copy of within notice is hereby admitted this 20th January, 1883. Nelson Smith.

UNITED STATES CIRCUIT COURT,
SOUTHERN DISTRICT OF NEW YORK.

In the matter of the claim of HARRIET A. MEAD, as Executrix of the Estate of James C. Mead, deceased, AGAINST The Estate of ABRAHAM MEAD, bankrupt.	Appeal from order expunging claim.

SOUTHERN DISTRICT OF NEW YORK, ss.:

EDWARD G. BLACK, of the City of New York, being duly sworn, says

I am the attorney for the claimant, appellant herein. On the 20th day of January, 1883, I filed and served notices of appeal and a bond and copy thereof upon and with the Clerk of the District Court of the United States for the Southern District

of New York, and upon the attorney for the creditor opposing the claim herein.

Since that time I have been exceedingly busy with many legal matters in my charge, and by an oversight I have omitted to file the appeal herein in the Clerk's office of this Court, within the time limited by Section 26 of the general orders in bankruptcy. This appeal is taken in good faith, and I have received instructions from the claimant to prosecute the same with all diligence.

I therefore ask that my time to file said appeal herein be extended for ten days from this date.

EDWARD G. BLACK.

Subscribed and sworn to before me this 1st day of February, 1883.

P. W. OSTRANDER,
[L. S.] Notary Public,
Kings Co.

Cert. filed N. Y., C. & C.

On the foregoing affidavit, it is ordered that the time for the claimant, Harriet A. Mead, as Executrix of James C. Mead, to file her appeal herein be and the same hereby is extended for ten days from date.

Dated New York, February 2d, 1883.

(Signed) ADDISON BROWN.

[ENDORSED:]

U. S. Circuit Court, Southern District of New York. In the matter of the claim of Harriet A. Mead, as Executrix, &c., against the estate of Abraham Mead, bankrupt. Affidavit and order extending time to file appeal. Edward G. Black, attorney for Harriet A. Mead, Executrix, 99 Nassau street, N. Y.

UNITED STATES CIRCUIT COURT.

SOUTHERN DISTRICT OF NEW YORK.

HARRIET A. MEAD, as Executrix of the Last Will, &c., of James C. Mead, Deceased,

AGAINST

JOHN H. PLATT, as Assignee in Bankruptcy of Abraham Mead Bankrupt.

SOUTHERN DISTRICT OF NEW YORK, SS.:

HARRIET A. MEAD, as Executrix of the last will and testament of James C. Mead, deceased, appeals to the Circuit Court above named to be holden in the said Southern District of New York, on the first Monday of April, A. D. 1883, from the decision of the Honorable Addison Brown, Judge of the U. S. District Court for said Southern District of New York, made and filed with the Clerk of said District Court. "In the matter of the re-examination of the claim of Harriet A. Mead, as Executrix of James C. Mead, deceased, against the estate of Abraham Mead, bankrupt," on the 11th day of January, A. D. 1883, wherein and whereby said District Judge refused to allow and expunged the claim of the estate of said James C. Mead against the estate of Abraham Mead, bankrupt.

Abraham Mead was adjudicated a bankrupt in the said District Court of the United States for the Southern District of New York, on the petition of his creditors, June 29th, 1878.

1878, July 19, James C. Mead filed a verified proof of debt with the Register in charge of said matter, whereby he claimed that there was due to him by said Abraham Mead, bankrupt, $34,350.

1878, July 20, James C. Mead filed with said Register an affidavit verrified this date, as a supplement to his proof of debt filed the day preceding.

1878, August 29, Mary E. Travis, a person claiming to be a creditor of said estate of Abraham Mead, filed with said Register

objections to said proof of debt of James C. Mead, and prayed that the same should be disallowed and expunged.

A large amount of testimony was taken in said matter before said Register and certified by him to the said District Court.

1882, March 5th, pending the hearing on said testimony by said District Judge, said James C. Mead, claimant, died.

Harriet A. Mead, widow of James C. Mead, having qualified as his Executrix, was substituted as claimant herein and the matter continued in her name.

1883, January 11th, the order of Hon. Addison Brown, U. S. District Judge, was made and entered, expunging the said proof of debt.

1883, January 20th, Harriet A. Mead, as Executrix, &c., of James C. Mead, filed a bond on appeal and notice of appeal to this Court with the Clerk of the U. S. District Court for this District, and the same day served a copy of said bond and notice of appeal on Nelson Smith, Esq., attorney for the said contesting creditor.

HARRIET A. MEAD,
As Executrix of James C. Mead, dec'd,
By Black & Ladd, her attorneys,
99 Nassau Street,
N. Y.

EDWARD G. BLACK,
Of Counsel for Harriet
A. Mead, as Executrix.

[ENDORSED:]

U. S. Circuit Court. Harriet A. Mead, as Executrix, &c., of James C. Mead, deceased, against John H. Platt, as Assignee of Abraham Mead, bankrupt. Notice of Appeal and Statement. Black & Ladd, attorneys for H. A. Mead, Executrix, &c., plaintiff, 99 Nassau street, N. Y.

CIRCUIT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

HARRIET A. MEAD, as Executrix of the Last Will and Testament of James C. Mead, deceased,

AGAINST

JOHN H. PLATT, as Assignee in Bankruptcy of the Estate of Abraham Mead, bankrupt.

SOUTHERN DISTRICT OF NEW YORK, ss.:

HARRIET A. MEAD, as Executrix of the last will and testament of James C. Mead, deceased, plaintiff in this suit, by Black & Ladd, her attorneys, complains of John H. Platt, as assignee in bankruptcy of the estate of Abraham Mead, bankrupt, defendant in this suit, of a plea that the said defendant render unto the said plaintiff the sum of thirty-four thousand three hundred and fifty dollars, lawful money of the United States of America, which the said defendant to the said plaintiff owes, and from her unjustly detains.

For that, whereas the said James C. Mead, prior to the year 1865, was a resident of New Canaan, in the State of Connecticut, and subsequent to said year 1865, and down to the time of his death was a resident of Sing Sing, in the State of New York, and while so residing at said places, and down to and including the month of February, A. D. 1875, the said James C. Mead, from time to time made loans and advances of money to Abraham Mead, a resident of the City, County and State of New York, and from time to time said James C. Mead received from said Abraham Mead certain writings or promissory notes, generally payable on demand, which sums so loaned and advanced as plaintiff is informed and believes, amounted in the aggregate to between ten thousand and twelve thousand dollars, but the dates or amounts of said several loans and advances this plaintiff is unable to specify.

That no agreement was made between the parties to such loans and advances further than that said Abraham Mead agreed to allow interest to said James C. Mead upon said several loans and advances, and it was from time to time agreed between said parties that certain of said moneys so loaned and advanced should be invested by said Abraham Mead with money of other parties in real estate for the benefit of all concerned, and pending any real estate investments as aforesaid, no interest was to be allowed on moneys so invested.

That thereafter certain of said real estate investments proved very profitable, and from time to time said James C. Mead and said Abraham Mead accounted together of and concerning said real estate operations, and the share of profits accruing thereon to said James C. Mead were, by agreement of the parties from time to time, left in the hands of said Abraham Mead as loans on demand, evidenced by notes therefor, and from time to time the old notes of said Abraham Mead, held by said James C. Mead for said loans and advances, and the notes for the profits on such real estate operations, which had been continued as loans as aforesaid, were surrendered by said James C. Mead to Abraham Mead, and new notes were given therefor, including the interest accrued on moneys held by said Abraham Mead not invested for the benefit of James C. Mead—sometimes combining several of said notes in one and at other times continuing notes separately.

That on the first day of January, A. D. 1875, by reason of the premises the said Abraham Mead was indebted to the said James C. Mead in the sum of twenty thousand three hundred and fifty dollars with interest thereon, for which he held three certain promissory notes made by said Abraham Mead in words and figures following:

NEW YORK, April 10th, 1873.

On demand I promise to pay James C. Mead, or order, ten thousand dollars, value rec'd.

$10,000. A. MEAD.

$5,750. SING SING, N. Y., Jan. 1st, '74.

On demand, I promise to pay James C. Mead, or order, five thousand seven hundred and fifty dollars, value rec'd.

A. MEAD.

NEW YORK, June 3d, 1873.

On demand I promise to pay James C. Mead, or order, four thousand six hundred dollars, value rec'd.

$4,600. A. MEAD.

That prior to said first day of January, 1875, said Abraham Mead had reported to said James C. Mead that he had invested certain of his, said James C. Mead's moneys not embraced or included in the moneys represented by the notes aforesaid, in real estate in the City of New York, together with money of certain other parties, which sum so invested for the account of James C. Mead was stated to be upwards of twenty thousand dollars. That said James C. Mead upon such report being made to him, repudiated said investment as unauthorized by him, and that thereafter said matter was compromised by agreement between said parties, whereby and in pursuance whereof said Abraham Mead, on the 4th day of January, 1875, assumed on his own personal account eight thousand dollars of said investment, and gave his note, dated on said last named day, payable three days after date to James C. Mead or order for said sum of eight thousand dollars. And afterwards in pursuance of said compromise agreement, and in consideration of the further sum of one thousand dollars, loaned and advanced by said James C. Mead to Abraham Mead, said Abraham Mead further assumed on his own personal account five thousand dollars more of said investment and gave his note, dated February 3d, 1875, payable on demand to James C. Mead or order for the sum of six thousand dollars, which sum included said further sum of $1,000, loaned or advanced as aforesaid. Said last named two notes are in words and figures following:

NEW YORK, January 4th, 1875.

Three days after date I promise to pay James C. Mead or order Eight thousand dollars value rec'd.

$8,000. A. MEAD.

$6,000. SING SING, N. Y., Feb. 3d, 1875.

On demand I promise to pay to James C. Mead or order Six thousand dollars value rec'd.

A. MEAD.

On or about the 29th day of June, A. D. 1878, the said Abraham Mead was adjudicated a bankrupt by the District Court of the United States for the Southern District of New York, and on or about the 27th day of July, A. D. 1878, this defendant was duly appointed the assignee in bankruptcy of the estate of said Abraham Mead.

That no part of the aforesaid indebtedness of Abraham Mead to James C. Mead was or has ever been paid.

That on or about the 19th day of July, A. D. 1878, the said James C. Mead duly filed with the Register in Bankruptcy in charge of the matter of Abraham Mead, bankrupt, his proof of debt, duly verified, upon the five notes aforesaid, for the aggregate sum of $34,350, and on the day following he duly filed with the said Register an affidavit as a supplement to his said proof of debt.

That thereafter one Mary E. Travis, an alleged creditor of the said bankrupt, filed objections to the said claim of James C. Mead, and petitioned that the same should be disallowed and the said proof of debt expunged. A reëxamination of the said claim was thereupon ordered by the said Register and testimony taken on behalf of the objector and the claimant, which testimony was duly certified to the Judge of the U. S. District Court, for the Southern District of New York.

That, pending the argument by counsel upon said testimony, and on or about the 5th day of March, A. D. 1882, the said James C. Mead departed this life at Sing Sing, Westchester County, New York, leaving a last will and testament, wherein and whereby this plaintiff was appointed the executrix of said last will and testament.

That said last will and testament was, on or about the 13th day of April, A. D. 1882, duly admitted to probate as a will of real and personal estate, and this plaintiff, on or about the said last-named date, duly qualified as such executrix of said will, and on or about the 29th day of April, A. D. 1882, she was, by an order of said District Court, substituted as claimant in said matter in the place and stead of said James C. Mead, deceased.

That on or about the 11th day of January, A. D. 1883, a decision was rendered and an order made and entered in said United States District Court matter, wherein and whereby the said claim of the estate of James C. Mead against the estate of

Abraham Mead, bankrupt, was disallowed and the proof of debt aforesaid was expunged.

That on the 20th day of January, A. D. 1883, this plaintiff, as claimant as aforesaid, duly filed her bond on appeal, and duly gave notice of appeal from said order and decision to this Court.

Wherefore, plaintiff prays judgment that the said claim of the estate of James C. Mead and this plaintiff, as executrix thereof, for the said sum of thirty-four thousand three hundred and fifty dollars, may be adjudged to be a good, valid and subsisting claim against the estate of said Abraham Mead, bankrupt, and against this defendant, and that the said proof of debt is full, perfect and sufficient.

BLACK & LADD,
Attorneys for Plaintiff.

Office and Post-office address,
99 Nassau Street,
New York City.

EDWARD G. BLACK,
Of Counsel for Plaintiff.

SOUTHERN DISTRICT OF NEW YORK, } ss.:
City, County and State of New York. }

EDWARD G. BLACK, being duly sworn, deposes and says that he is one of the attorneys of the plaintiff in this action, and resides in the City of New York, in the County of New York; that the foregoing declaration is true to the knowledge of deponent, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true. Deponent further says that the grounds of his belief as to all matters therein not stated upon his knowledge are as follows: Deponent was present at an examination, under oath, of the said James C. Mead, now deceased, and heard his testimony concerning the matters herein, and acted as his counsel on such examination and had many conversations with him concerning the facts here set forth.

Deponent further says that the reason why this verification is not made by said plaintiff is that said plaintiff is not within the said County of New York.

EDWARD G. BLACK.

Sworn to before me this 8th day of February, 1883.

WILLIAM B. SHOVE,
Notary Public (63),
New York Co.

[ENDORSED:]

U. S. Circuit Court. Harriet A. Mead, as executrix, &c., of James C. Mead, deceased, against John H. Platt, as assignee of Abraham Mead, bankrupt. Copy declaration. Black & Ladd, attorneys for H. A. Mead, Ex., &c., plaintiff, 99 Nassau street, New York.

Due service of a copy of within paper is hereby admitted.
Dated New York, 10th February, 1883.

J. H. PLATT,
Assignee.

CIRCUIT COURT OF THE UNITED STATES,
FOR THE SOUTHERN DISTRICT OF NEW YORK.

HARRIET A. MEAD, as Executrix of the Last Will and Testament of James C. Mead, deceased, AGAINST JOHN H. PLATT, as Assignee in Bankruptcy of the Estate of Abraham Mead, Bankrupt.	Matter of Abraham Mead, Bankrupt. Reëxamination of Claim of Harriet A. Mead, as Executrix of James C. Mead, against the Estate of Abraham Mead, Bankrupt.

Please take notice that upon the record and proceedings herein, and upon the record and proceedings in the intended or supposed appeal claimed to have been taken by the above-named

complainant from the order or decree of the United States District Court, filed in the office of the Clerk thereof on the 11th day of January, 1883, disallowing and expunging the claim of said complainant against said bankrupt, and the annexed affidavit of John H. Platt, verified this day, I shall apply at a Term of this Court, to be held in the court-room thereof, at the General Post Office building in the City of New York, on 2d day of March, 1883, at the opening of the Court on that day, or as soon thereafter as counsel can be heard, for an order dismissing the said supposed appeal, upon the following grounds, viz.:

FIRST. That no notice of appeal and bond have been properly given, as required by the Bankrupt Act, and particularly by § 4981 of the Revised Statutes of the United States.

SECOND. That no appeal has been properly entered, as required by General Order XXVI, by filing the same in the mode prescribed therein, or otherwise properly entered.

THIRD. That the paper purporting to be a statement of claim, or declaration of said claimant, or supposed creditor herein, does not conform to the statement of claim or proof of debt made heretofore before the Register, and which was expunged and disallowed by the order or decree of the District Court aforesaid, nor, in other respects, is it conformable to law.

And for such other or further relief, or both, as to the Court may seem meet.

Dated New York, February 26th, 1883.

Yours, &c.,

WM. FORSE SCOTT,

Attorney for Assignee,

* For the purposes of this Motion.

To EDWARD G. BLACK, ESQ.,

Attorney for said supposed creditor,

BLACK & LADD, ESQRS.,

Attorneys for Claimant herein.

CIRCUIT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

HARRIET A. MEAD, as Executrix of the last Will and Testament of James C. Mead, deceased, AGAINST JOHN H. PLATT, as Assignee in Bankruptcy of the Estate of Abraham Mead, Bankrupt.	*Re* Abraham Mead, Bankrupt. Re examination of claim of Harriet A. Mead, as Executor, &c., of James C. Mead against the estate of Abraham Mead, Bankrupt.

SOUTHERN DISTRICT OF NEW YORK, City and County of New York, } ss.:

JOHN H. PLATT, being sworn, says that he is the above-named assignee. That, as he is informed and believes, an appeal has been claimed, or intended, to have been taken by Harriet A. Mead as Executrix, &c., of James C. Mead, in the matter of the re-examination of her claim against said bankrupt's estate, from a certain order or decree of the District Court, filed in the Clerk's office thereof, January 11th, 1883, disallowing and expunging her supposed claim, but no notice of such intended appeal, or bond thereon, has been served upon deponent, though more than ten days have elapsed since said 11th of January aforesaid.

JOHN H. PLATT.

Sworn to before me this 26th day of February, 1883.

WALDO HUTCHINS,

[L. S.] Notary Public,

N. Y. County.

[ENDORSED:]

United States District Court, Southern District of New York. Matter of Abraham Mead, Bankrupt. Re-examination of claim of Harriet A. Mead, as Executrix, &c., of James C. Mead, against the estate of Abraham Mead, Bankrupt. Harriet A.

Mead as Executrix, &c., of James C. Mead, against John H. Platt as assignee, &c. Affidavit and notice of motion to dismiss appeal. Wm. Forse Scott, attorney for assignee for the motion, 40 Wall St., N. Y. City. Black & Ladd, Esqs., attys. for claimant.

CIRCUIT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

HARRIET A. MEAD, as Executrix of the Last Will and Testament of James C. Mead, deceased, AGAINST JOHN H. PLATT, as Assignee in Bankruptcy of the estate of Abraham Mead, bankrupt.	Appeal from order expunging plaintiff's claim.

SOUTHERN DISTRICT OF NEW YORK, City and County of New York, } ss.:

EDWARD G. BLACK, being duly sworn, says, I am one of the attorneys for the Executrix, Harriet A. Mead, in the above-named appeal.

Said appeal is taken from an order of the District Court of the United States for the Southern District of New York, entered and dated in its caption January 11th, 1883.

Said order was entered on the appliction of Nelson Smith, Esq., attorney for Mary E. Travis, an alleged creditor of the above-named bankrupt, who alone has contested the claim of the executrix herein.

Said appeal was claimed and notice thereof was given by said executrix to the clerk of said U. S. District Court, and also to said creditor, Mary E. Travis, on the 20th day of January, 1883, and at the same time the said executrix duly filed her bond on appeal herein with the clerk of said U. S. District Court, and served a copy thereof upon said contesting creditor. By an oversight I failed to file the appeal herein on or before the

30th day of January, 1883, as provided by the twenty-sixth General Order in bankruptcy, but discovering the omission on the first day of February, 1883, I handed to the clerk of this Court, an affidavit and proposed order extending my time to file such appeal, and said order was duly made and entered on the 2d day of February, 1883, and thereby the time to file said appeal was extended to February 12th, 1883.

On the 8th day of February, 1883, I filed with the clerk of this Court a statement in writing of the claim of said executrix, substantially the same as in a declaration for the same cause of action at law, and on the 10th day of said month of February, I served a copy thereof on said John H. Platt, as assignee in bankruptcy of Abraham Mead, bankrupt, and at or about the same date I requested the clerk of said U. S. District Court to certify and transmit to this Court the record of the proceedings upon said claim in said Court, but by reason of a press of business said clerk failed to file said record with this Court until the 24th of February, 1883, though frequently requested by deponent so to do between the two last named dates, and then he omitted to return as a part of such record a copy of the order or decision appealed from herein, but he subsequently supplied said paper.

EDWARD G. BLACK.

Subscribed and sworn to before me, this 8th day of June, A. D. 1883.

WILLIAM V. H. HICKS,
Notary Public,
Kings and N. Y. Cos.

[SEAL.]

[ENDORSED:]

U. S. Circuit Court. Harriet A. Mead, as executrix, &c., of Jas. C. Mead, against John H. Platt, as assignee, &c. Affidavit to oppose motion to dismiss appeal. Black & Ladd, attorneys for H. A. Mead, executor, 99 Nassau street, N. Y.

U. S. Circuit Court; filed Aug. 2d, 1883; Timothy Griffith, clerk.

U. S. CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

HARRIET A. MEAD, as Executrix, &c.

vs.

JOHN H. PLATT, Assignee, &c.

It is hereby stipulated that the motion by the assignee to dismiss the complainant's appeal herein may be argued and disposed of by Hon. Justice Hoyt H. Wheeler, and an order entered on his decision with like effect as if it were argued before a Judge of this Court, all objection to his not being the Circuit Judge being waived.

Dated July 17th, 1883.

BLACK & LADD,
Complainant's Solicitors.

WM. FORSE SCOTT,
Respondent's Attorney.

[ENDORSED:]

U. S. Circuit Court. Harriet A. Mead, executrix, vs. John H. Platt, assignee. Stipulation as to jurisdiction.

U. S. Circuit Court; filed Aug. 2d, 1883; Timothy Griffith, clerk.

CIRCUIT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

HARRIET A. MEAD, Executrix,

vs.

JOHN H. PLATT, Assignee.

April Term, 1883.

WHEELER, J. This is an appeal by the plaintiff from the disallowance by the District Court, held by Judge Brown, of her claim against the estate in bankruptcy of which the defendant is assignee. The claim was examined on application of Mary E. Travis, a creditor, and contested by her. Notice of the appeal was given to her within ten days from the entry of the decision, but not to the assignee. The assignee has moved to dismiss the appeal for this cause, among others; and the motion has been heard by consent of parties, which was required before hearing, although this case is not within the terms of the statute in relation to hearing appeals from a District Court by a District Judge. Rev. Stat., Sec. 614.

The failure to give notice of the appeal to the adverse party as required by Sec. 4981, Rev. Stat., is fatal to it, and good ground for moving to dismiss it. Wood vs. Bailey, assignee, 21 Wall., 640. Unless the moving creditor in the District Court is the adverse party, within the meaning of Sec. 4981, this appeal must, on the authority of that case, be dismissed. The provisions of that section must be read with the others on the same subject for a correct understanding of them. The preceding section allows appeals in equity and writs of error at law when the debt or damages claimed amount to more than five hundred dollars; and gives an appeal to "any supposed creditor whose claim is wholly or in part rejected, or an assignee who is dissatisfied with the allowance of a claim." This section requires the notice to be given, "to the assignee or creditor as the case may be." The assignee represents the estate and is the adverse party to all claimants against the estate. He is the party who, by Sec. 4984, must plead or answer to the declaration of the claimant, and against whom, by Sec. 4985, costs are

to be taxed as "the adverse party," if the claimant prevails. A creditor applying for and procuring the examination of a claim does no more than the Court may do of its own motion, and does not become a party to that particular claim, Sec. 5081. Such creditor merely sets the machinery in motion to have the claim adjudicated by the Court; the defense of the claim must always be in the name and behalf of the assignee. There are no provisions for making such moving creditor any otherwise a party. The words "assignee or creditor as the case may be," must mean assignee when the creditor appeals, and creditor when the assignee appeals. When the creditor appeals the assignee is the one who must plead and make defense, and the one who needs notice of the appeal to act upon. He is the adverse party, in the sense of Sec. 4981.

Motion granted, and appeal dismissed.

WILLIAM W. LADD, JR., for Plaintiff.

COLERIDGE A. HART, for Assignee.

At a Stated Term of the Circuit Court of the United States, in and for the Southern District of New York, held at the Court Room thereof, in the City of New York, on the 17th day of July, 1883.

Present—Hon. Hoyt H. Wheeler, Judge.

Harriet A. Mead, as Executrix of the Last Will and Testament of James C. Mead, deceased,
Appellant,

AGAINST

John H. Platt, as Assignee in Bankruptcy, of Abraham Mead, bankrupt,
Respondent.

Matter of Abraham Mead, bankrupt. Re-examination of claim of Harriet A. Mead, as Executrix, &c., of James C. Mead, against the estate of Abraham Mead, bankrupt.

An order having been duly entered on the 11th day of January, 1883, in the office of the Clerk of the District Court of the United States for the Southern District of New York, among other things, disallowing and expunging the claim, or proof of debt of James C. Mead, claimant, as filed July 19th, 1878, and amended May 6th, 1882, and the above named Harriet A. Mead, as executrix, &c., of said James C. Mead, having attempted to appeal from said order, and a motion having been duly made by John H. Platt, assignee herein, to dismiss said appeal,

Now, upon referring to the record and proceedings herein, and to all papers filed upon said attempted appeal, and on reading and filing the affidavit of John H. Platt, verified on or about February 26th, 1883, and the notice of this motion, annexed thereto, with due proof of their service upon the attorney of said Harriet A. Mead, and the counter affidavit of Edward G. Black, presented upon the argument, and a written consent executed to the attorneys for the respective parties to this motion, dated July 17th, 1883, that the same be heard and determined by the Hon. Hoyt H. Wheeler, as Circuit Judge, and after hearing Mr. Hart, of counsel for said John H. Platt, for said motion, in his

behalf thereon, and Mr. Ladd, of counsel for said Harriet A. Mead, as executrix, &c., of James C. Mead, deceased, in opposition, in her behalf thereon, on motion of William Forse Scott, Esq., attorney for said assignee, it is

Ordered, that said motion be and the same is hereby granted and that said attempted appeal be and the same is hereby dismissed.

(S'd.) HOYT H. WHEELER.

[ENDORSED:]

U. S. Circuit Court, Southern District of N. Y. In the matter of Abraham Mead, bankrupt. Harriet A. Mead, as Executrix, &c., Appt., vs. John H Platt, as Assignee, &c., of Abraham Mead, B'rupt, Respt. Re-examination claim Harriet A. Mead, as Executrix, &c., Jas. C. Mead, agst. the estate of Abraham Mead, Bankrupt. Order dismissing appeal. Wm. Forse Scott, Atty. John H. Platt, Assne., 67 Wall Street, N. Y. City, N. Y. Please take notice that the within is a copy of an order made by Hon. Hoyt H. Wheeler, Judge, and this day duly entered in the office of the Clerk of the U. S. Circuit Court for the Southern District of New York, at the General Post Office Building in the City of New York. Dated August 16th, 1883. Yours, &c., Wm. Forse Scott, Atty. for Assignee. To Edward G. Black, Black & Ladd, Attys. for H. Mead.

109-230

SUPREME COURT U.S.
OCT 23 1883
BURGOYNE LAW TO. 387, 389 & 61 PARK ST.
JAS. H. McKENNEY, Clerk.

U. S. Supreme Court.

IN THE MATTER

OF

The application of HARRIET A. MEAD, Executrix of JAMES C. MEAD, for a Writ of Mandamus, &c.

Points on application for order to show cause why mandamus should not issue.

STATEMENT.

Proceedings in bankruptcy were pending in the Southern District of New York against Abraham Mead. James C. Mead filed a claim against the bankrupt's estate for $34,350 (pages 8–9). Mary E. Travis, another creditor of the bankrupt, filed objections to this claim and prayed that it be expunged (pages 5–8). While testimony was being taken on the objections, James C. Mead died, and Harriet A. Mead, his wife, having qualified as executrix, was, by order, substituted in his place as claimant (page 2). A hearing was had before the District Judge upon the claim, objections and testimony taken, and, in November, 1882, a decision was filed expunging the claim of J. C. Mead (pages 13–19). On January 11, 1883, an order was entered in conformity therewith (pages 20–21).

James C. Mead's executrix claimed an appeal from this order, and on January 20th, 1883, within ten days after the entry of the order appealed from, gave notice of appeal (pp. 22, 23) to the Clerk of the District and to Mary E. Travis, the contesting creditor (see Admission Service, p. 23).

An order extending for ten days appellant's time to file her appeal, was granted by the District Judge (p. 24), and within that extension the appellant filed the statement and declaration required, and served a copy of such declaration on the assignee, who admitted due service (pp. 25–32).

Thereupon the assignee moved to dismiss the appeal upon the grounds: (1) that no notice of appeal or bond had been properly given; (2) that no appeal had been properly entered; (3) that the statement of claim or declaration did not conform to the proof of debt. Argument was had on this motion before Hon. Hoyt H. Wheeler, sitting as Circuit Judge, and he filed a decision (pp. 38, 39) dismissing the appeal upon the sole ground that notice of appeal had not been served on the assignee. An order was duly entered on this decision on August 16th, 1883 (p. 41). The executrix of James C. Mead, claimant, now seeks to review this action of the Circuit Court.

POINTS.

I.

The appeal was dismissed by the Circuit Court upon the sole ground that notice of appeal was not served on the bankrupt's assignee, although such notice was properly and in due time, served on and filed with the Clerk of the District Court, and on the creditor who, in the District Court, contested J. C. Mead's claim (see Opinion C. J., page 38).

This action gives an erroneous construction to the provisions of the Revised Statutes regulating such appeals.

The reasoning in the opinion overlooks the fact that not alone the assignee may object to a claim, but a creditor has that right (R. S., § 5081). It was a creditor who objected in the present instance. It was her counsel who appeared in her behalf on the taking of testimony and on the final hearing before the District Court. The assignee did not appear, was not heard by counsel and was not a party to the attempt to expunge the claim. This was in accordance with the well recognized cause of procedure,

warranted by section 5081 and by the 34 General Order in Bankruptcy.

Bearing in mind this provision for re-examination upon the application of a creditor, in section 5081, as well as upon the motion of the assignee, and reading that section with section 4981, the words "to the assignee or creditor *as the case may be*," in the latter section, mean that notice should be given to either creditor or assignee as the one or the other has been in the particular case the party opposing the allowance of the claim in the District Court.

The assignee, in every instance, is notified of the progress of the appeal, for by § 4984 he is made defendant in the Circuit Court, and by the rules of this Court he is required to be served with a copy of the appellant's declaration.

II.

The only authority cited by the learned Circuit Judge is Wood vs. Bailey, 21 Wall., 640.

That case arose on a bill in equity filed by an assignee in bankruptcy to contest the validity of liens on the bankrupt's estate, the lienor creditors being defendants. The complainant obtained a decree. Defendants appealed, but omitted to give notice of appeal to the assignee. For this omission the appeal was dismissed by the Circuit Court and its action affirmed here.

From this statement and from the case itself it is apparent that this Court construed only so much of section 4981 as related to appeals in equity actions—it did not pass on the question now presented.

It is submitted that the reasoning of Justice Miller, in Wood vs. Bailey, does not accord with the action or opinion of the Circuit Judge in the case at bar. That reasoning requires notice of appeal to be given to the party who, in the Court from which the appeal is taken, was "opposed" to the defeated party.

Certainly in the present case that was the creditor, Mary E. Travis. She objected to and fought the claim, and was inter-

ested in defeating it. The assignee might have joined her, but he did not see fit to do so.

III.

It is submitted that the question presented has not been decided by this Court, and is a proper one to be argued and reviewed.

The Circuit Court having refused to entertain jurisdiction, the claimant's remedy is the present application for an order to show cause why a mandamus should not issue to compel proceeding in her case.

Ex parte Crane, 5 Peters, 190.
Ex parte Bradley, 7 Wallace, 364.
Ex parte United States, 16 Wallace, 699.
Ex parte Jordan, 4 Otto, 248.
Knickerbocker Ins. Co. vs. Comstock, 8 N. B. R., 145.

IV.

The claimant's demand in the present case is in a large amount, viz.: $34,350, and it is not more than justice that the action of one Judge rejecting it should be reviewed by an appellate tribunal, and that an omission in technical procedure should not debar her of an appeal.

If for any reason this Court refuses to grant an order to show cause, it is submitted that this is a proper case in which to suggest to the District Court that a rehearing be had, so that claimant may supply the technical omissions and perfect an appeal.

This course is warranted by precedent. It was adopted in Stickney vs. Wilt, 23 Wallace, 150.

In which case, at page 164 of the report, Judge Clifford says: "Unable to refer the appellee to any legal remedy as matter

right, under the present pleadings, it seems to be proper, in the judgment of the whole Court, to suggest that it may be that the District Court will grant a review of the decree rendered in that Court, if a proper application is presented for that purpose, which would lay the foundation, if it be granted, in case of an adverse decision upon the merits of the case, for a regular appeal to the Circuit Court."

V.

The application for an order to show cause why a mandamus should not issue as petitioned for should be granted.

Henry J. Scudder

Of Counsel for Petitioner.